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Paper No. 8

MOSER, PATTERSON & SHERIDAN L.L.P.
595 SHREWSBURY AVE, Suite 100
SHREWSBURY NJ 07702
Attention: Eamon J. Wall

FEB 26 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
Arunachalam et al.
Application No. 09/303,718
Filed: April 30, 1999
For: SCALABLE HIGH SPEED ROUTER
APPARATUS

**DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT**

This is in response to the Petition for Withdrawal of Abandonment filed December 11, 2003, pursuant to 37 C.F.R. § 1.181(a). No fee is required.

On June 5, 2002, a non-final Office action was mailed (paper No. 4) in the subject application. A response from Applicants was not received and matched with the file. On November 10, 2003, a Notice of Abandonment was mailed (paper No. 5).

Petitioner alleges that the Office action of June 5, 2002 (paper No. 4) was not received. In support of this, Petitioner provides evidence of change of address (filed August 5, 2003), a declaration from a Ms. Clara J. Castle (identified in the petition as assistant to then attorney of record, Mr. Keith D. Nowak, Esq.) and copies of Lieberman & Nowak LLP' docket records.

In the absence of any irregularity in the mailing of an Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the record indicates that the Notice To File Missing Parts of May 1, 2001, was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the non-final Office action (paper No. 4) on the part of the Patent and Trademark Office.

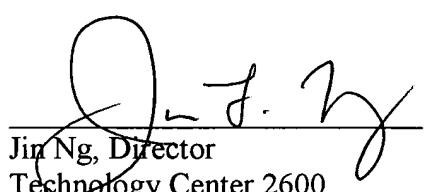
The petitioner has not made a sufficient showing of non-receipt of the non-final Office action (paper No. 4, mailed June 5, 2002) in accordance with the requirements set forth above. The instant petition lacks a statement *from the practitioner* of record (at the time of mailing the Office action), indicating: (1) that the non-final Office action (paper No. 4, mailed June 5, 2002) was not received, (2) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Notice To File Missing Parts was not received and (3) reference to attached docketing records within practitioner's statement.

The petition is **DENIED**.

With respect to the Associate Power of Attorney/Change of Correspondence Address filed by facsimile on August 5, 2003 (paper No. 6), it is noted that this communication merely appoints attorneys as associate attorneys of record. There is no petition to revoke or withdraw attorneys of record in the application. Mr. Nowak, for example, has not been withdrawn as attorney of record, or powers revoked, in the application.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision and include the deficiencies outlined above.

The application will be forwarded to TC2600's Technical Support Staff to update the correspondence address. Afterwards, the application will be held in the Technology Center for two months awaiting any requests for reconsideration of this decision.



Jin Ng, Director
Technology Center 2600
Communications
(703) 305-4800